

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ALPHONSO CLARK,

Plaintiff,

v.

Civil Action No.

BUFFALO CITY SCHOOL DISTRICT,

Defendant.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

**I. INTRODUCTION**

1. This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Telephone Consumer Protection Act of 1991 (hereinafter referred to as the "TCPA").

**II. JURISDICTION AND VENUE**

2. Subject matter jurisdiction of this Court arises under 28 U.S.C. § 1331.
3. Venue is proper in this district under 28 U.S.C. § 1391(b) in that the Defendant transacts business in the Western District of New York and the conduct complained of occurred in the Western District of New York.

**III. PARTIES**

4. Plaintiff, Alphonso Clark, is a natural person residing in County of Erie and State of New York.
5. Defendant, Buffalo City School District, is a public school district organized under the laws of New York doing business in the State of New York.
6. That at all times relevant herein, Defendant owned, operated and/or controlled "customer premises equipment" as defined by the TCPA, 47 U.S.C. § 153(16), that originated, routed, and/or terminated telecommunications.

7. That at all times relevant herein, Plaintiff was and is a “person” as defined by the TCPA, 47 U.S.C. §153(39).
8. That at all times relevant herein, Defendant has used the United States mail service, telephone, telegram and other instrumentalities of interstate and intrastate commerce to attempt to contact consumers.
9. That Defendant, at all times relevant herein, engaged in “interstate communications” as that term is defined by the TCPA, 47 U.S.C. §153(28).
10. That Defendant, at all times relevant herein, engaged in “telecommunications” as defined by the TCPA, 47 U.S.C. §153(50).
11. That Defendant, at all times relevant herein, used, controlled and/or operated “wire communications” as defined by the TCPA, 47 U.S.C. §153(59), that existed as instrumentalities of interstate and intrastate commerce.
12. That Defendant, at all relevant times herein, used, controlled and/or operated “automatic telephone dialing systems” as defined by the TCPA, 47 U.S.C. §227(a)(1) and 47 C.F.R. 64.1200(f)(2).
13. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
14. All references to “Defendant” herein shall mean the Defendant or an employee of said Defendant.

#### IV. FACTUAL ALLEGATIONS

15. That on or about September 2020, the Defendant began calling and leaving automated voicemails to the Plaintiff’s cellular telephone.
16. That the Defendant would leave automated and/or pre-recorded voice messages on Plaintiff’s cellular telephone that pertained to events or matters involving various City of Buffalo schools.
17. The Plaintiff does not have any children, nor has any children that utilize the attend any school in the City of Buffalo.
18. That during the first few times that Plaintiff received the aforementioned voice messages from the Defendant, Plaintiff called various schools within the City of Buffalo school system and requested that he stop receiving these calls.
19. The Plaintiff still continues to receive these calls to his cellular phone from the Defendant after his repeated attempts to stop these phone calls.

20. Over the course of a year, the Plaintiff has received over 50 telephone calls from the Defendant.
21. That Defendant's automated voicemails consumed 21 minutes and 15 seconds of the Plaintiff's cellular phone.
22. The voicemails would state different messages pertaining to school absences, the Covid-19 pandemic and school events or initiatives.
23. The Defendant initiated the following automated voicemails to the Plaintiff's cellular device, all differentiating in length and subject matter;
  - a. "CLRI for a virtual meeting regarding the Our Story Project High School After-School program. Also, welcome to Black History 2021. We live and we climb. Families, friends, students, teachers, administrators, and community members, please join the office of CLRI in celebrating and honoring Black History and brilliance as American History during their high leverage Black History Month programming. Details and flyers for both programs, can be found on the CLRI webpage at [buffaloschools.org](http://buffaloschools.org). Also, check this page for daily Black History Month updates. Thank you."
  - b. "Hutchinson Technical School. A student in your household, in grade twelve, named ... was marked absent on February 1, 2021. Please send a note on the students return to school to provide an explanation."
  - c. "A student in your household, grade twelve named ... was marked absent on February 3, 2021. Please send a note on the student's return to school to provide an explanation."
  - d. "22, City Honors, and Olmstead School 156 admission test has been extended until Friday, March 26<sup>th</sup>. To participate in the Saturday, March 27<sup>th</sup> test administration, your child must be registered by Wednesday, March 24<sup>th</sup>. Visit [buffaloschools.org](http://buffaloschools.org) for additional information. Register today."
  - e. "Superintendent Dr. Kriner Cash. Today the Center for Disease Control and Prevention, announced updated guidance to reduce the required physical distance rule from six feet to three feet in schools and classrooms. In speaking with the Erie County Department of Health , our Medical Director, board , and staff, BPS will be strictly adhering to wearing facial masks at all times, six feet social distancing in our buildings, and retaining any barriers that are already in place until further notice. Thank you."
  - f. "Schools Phase 2 re-opening will happen on Monday, March 22<sup>nd</sup>. All staff, and Phase 1 and Phase 2 returning students, will report to their schools. Buses will run on schedule. We ask that all motorists exercise extreme caution around bus stops and school zones. Principals will communicate with their staff and families accordingly. Thank you."

- g. “sites are open from 11:00 am until 1:00 pm. The USDA combo boxes providing protein, dairy, and produce will be available either today or Friday at all sites. First come, first serve. For the complete list of sites on the BPS webpage at [buffaloschools.org](http://buffaloschools.org), the Buffalo Schools, or the BPS Parents Centers Facebook Pages. Thank you.”
- h. “BPS Parent Centers is excited to announce Cooking Together, a new virtual series and partnership with Flourish Café. These eight interactive virtual cooking classes are designed for families to cook simple and healthy recipes together. Flourish Café owners will guide viewers through weekly recipes step by step. Recipe cards with the ingredient list will be available prior to each class. A free digital cookbook will be available to participants. A limited supply of free samples of each week’s recipes will be available at select Parent Center Grab-and-Go sites. The first episode of the series is this week Tuesday, January 12, at 6:15 pm. You may join the Zoom platform or watch live on Facebook. Visit the BPS Parent Centers Facebook page or check your email for the link. We can’t wait to see you on Tuesday at 6:15.”
- i. “Our Strong Communities Schools Team for a virtual Saturday academy on Saturday, January 16, at 10:00 am. Activities include yoga with Luke Southcare, art expression with the Albright Knox Gallery, comedic writing with Just Buffalo Literary Center, painting on canvas, and much more. Supply pick up, at South Park High School on January 15<sup>th</sup>, from 11:00 am until 1:00 pm, and also at North Park Community School on January 13<sup>th</sup> and January 16<sup>th</sup> from 11:00 am until 1:00 pm. Deliveries are available upon request. Supplies are limited. To register please visit the BPS Community Schools page and click the BSA registration bank. Please share with the BPS community and we hope to see you there.”
- j. “The BPS Virtual Parents Centers is excited to announce a new series. Bring to the Fit Family Fitness Dance classes with Sara Higel. Learn strategies to support heart, body, and mind for a more fulfilling family life. These classes will include lessons in bachata, merengue, salsa, hip- hop, yoga, breathing exercises, mindfulness, and more. The first class is Thursday, January 21<sup>st</sup>, from 6:00 until 7:00 pm and will be conducted every Thursday through April 8<sup>th</sup>. To join classes on the Zoom platform, click the link emailed to you or posted on the BPS Parents Center Facebook page, or you may simply watch live on the BPS Centers page. Thank you.”
- k. “This is a message from Hutchinson Central Technical School. A student in your household in grade twelve, named ... was marked absent on January 15, 2021. Please send a note on the students return to school to provide an explanation.”
- l. “Dear Buffalo Public Schools families. Please see the email associated with your phone number for a statement of the Council of the Great City Schools,

regarding the attack on our Nation's Capital on January 6, 2021. This message is endorsed by Superintendent Dr. Kriner Cash, Buffalo Board of Education President Sharon Belton-Cottman and the entire board of education. Thank you."

- m. "BPS parents of students in grades three through eight. Please visit the Buffalo Schools webpage at [buffaloschools.org](http://buffaloschools.org) to read an important message regarding New York State Assessments from BPS Chief Accountability Officer Mrs. Ebony Bullock. As well as a resolution from the BPS Board of Education. Thank you."
- n. "Do you have questions about summer school or camp? Good evening, this is Dr. Wendy Mistretta President of the Buffalo Public Schools District Parents Coordinating Council, inviting all parents, guardians, caregivers, and friends to our monthly business meeting on Tuesday, April 13<sup>th</sup> from 6:00 to 8:00 pm. We warmly welcome everyone for a special presentation from Directors Extended Learning Time, for Say Yes Buffalo, and Buffalo Public Schools. They will share preliminary plans and we will have time to provide our thoughts and suggestions. The instructions for meeting participation will be provided from the email from the district and we will share the link on our Buffalo DPCC Facebook page. We have power with parents from all of our schools work together in support of the district's mission of putting children and families first, to ensure high academy achievement for all. Please stay safe, be well, and join us on Tuesday April 13<sup>th</sup>."
- o. "Good Afternoon. My name is Cecelie Owens Assistant Superintendent for Health, Special Education, and Athletics for the Buffalo Public Schools. Over the winter, we have worked with Project Play of Western New York, Blue Cross Blue Shield Blue Firm, and the Teachers Desk to provide fun-filled play packs for students in grades four through eight. All play packs have been delivered. There are several items that students can play with, and we want to encourage them to get and stay active. Each week your child can participate in the Project Play Western New York Free Play Challenge PE Edition to win prizes and be added to a large end of the year raffle. Prizes include: skate boards, bicycles, autographed jerseys, and roller skating parties, so make sure to register at [Project Play Western New York.org](http://Project Play Western New York.org). That's [projectplaywny.org](http://projectplaywny.org) to receive emails about the challenges and prizes available. Let's get moving. Thank you."
- p. "The Buffalo Public Schools and the Erie County Department of Health are teaming up to provide our school community with Covid-19 vaccinations at various school sites on Saturday. Different school locations will periodically host Covid-19 Vaccination Clinics. Please go to our district homepage at [buffaloschools.org](http://buffaloschools.org) and click the Covid-19 vaccination link for more information and to register."

- q. "...BPS family, friends, and community members, this is Kim Herendez of the Buffalo Public Schools Special Education Parent Advisory Committee. I'm inviting you to our next virtual VPAK meeting being held Monday, April 19<sup>th</sup> from 5:30 to 7:00 pm. This meeting will give you a chance to hear updates, updated information directly from Kim Hoelscher our BPS Special Education Assistant Superintendent. Together in support of the district's mission of putting children and families first to ensure high academic achievement for all. Please be safe, be well, and please join us on Monday if you have any Special Education questions, issues, or concerns. Thank you."
- r. "Please join the Buffalo Public Schools on Thursday April 22<sup>nd</sup> at 5:00 pm for a Youth Town Hall where we will engage in courageous conversations related to current events and national and local issues impacting our youth in our community. We hope that you can join our scholars and other community leaders for this critical discussion. Please check your email or review the Town Hall Meeting for Justice Flyer on the Buffalo Schools webpage for Zoom platform information. Thank you."
- s. "Buffalo Public Schools grab-and-go meal service will be offered one day per week only. Wednesdays from 11:00 am until 1:00 pm, beginning April 21, 2021. This change from Monday, Wednesday, Friday is being made in order to have staff available to service the students in schools, along with the anticipation of more students coming back to the schools in Phase 3 and Phase 4. Combo boxes, when available, will be distributed on Wednesdays along with the seven day meal service. Families will be offered the same number of meals for the week with a one day, Wednesday pick up. Thank you."
- t. "Mark your calendars now for the Buffalo Public Schools 2020-2021 Parent, Family, and Community Engagement Summit. This special event will take place on Thursday, May 20<sup>th</sup> at 5:30 pm live on the BPS Parent Centers Facebook page. We are excited to welcome and thank this year's sponsor Key Bank, as they help celebrate the commitment and hard work of families, community, staff, and students. Login early for special pre-show entertainment at 5:00 pm that will feature performances from some of Buffalo's most talented students. To learn more about the summit, visit the parent and family engagement page at [buffaloschools.org](http://buffaloschools.org). Thank you."
- u. "The Buffalo Public Schools and the Erie County Department of Health are teaming up to provide our school community with Covid -19 vaccinations at different school locations. This Saturday's site is Math, Science, Technology High School located at 646 East Delavan Avenue. Please visit our BPS homepage at [buffaloschools.org](http://buffaloschools.org) and click the Covid-19 vaccination link for more information and to register."
- v. "Hello this is Rachel Fix Dominguez of the Buffalo Parent Teacher Organization. We are holding our monthly meeting this Saturday April 24<sup>th</sup> from 9 to 11:00 am. We hope you will join us to discuss Covid testing

protocols in Buffalo Public Schools in Phase 3 and 4 of re-opening. Our guest speaker is Ms. Mai Nguyen Director of Social Emotional Wellness for BPS. You can join the meeting at <https://tinyurl.com/pncrpc>. You can also find this link on our PTO Facebook page where we work hard to provide you with timely informed on what's going on in our Buffalo Public School Community. We hope to see you on Zoom Saturday morning. Thank you and be well."

- w. "Greetings. As we welcome more students into our schools please remember the importance of following the safety measures created to minimize the spread of the Covid –19 virus. Every person entering our building must complete the Covid daily screening and remain at home as instructed by the screener. It is important that face masks covering the nose and mouth continue to be worn and that hands are washed frequently to reduce the spread of the virus. In addition to these safety measures, we are continuing to perform random testing for Covid in our schools. If you have not done so, please consider completing the Consent to Test form to help us better monitor the potential spread in our buildings. Contact your building administrator for more information on daily screeners and Consent to Test forms. Thank you."
- x. "The Buffalo Public Schools and the Erie County Department of Health are teaming up to provide our school community with Covid –19 vaccinations at different school locations. This Saturday's site is McKinnley High School located at 1500 Elmwood Avenue Buffalo, 14207. Please visit our districts homepage at [buffaloschools.org](http://buffaloschools.org) and click the Covid-19 vaccination link for more information and to register."
- y. "The Buffalo Public Schools will receive American Rescue Covid-19 Relief Funds and want to hear from you on how to best spend the funds to support students and families. Please join us on the BPS Parents Centers Facebook page for one of three upcoming meetings. The first meeting will be conducted on Thursday April 29<sup>th</sup> from 4:00 till 6:00 pm. Thank you."
- z. "The Erie County Health Department has begun holding Covid -19 vaccination clinics for 16 to 18 year old students. This Saturday, May 1<sup>st</sup>, there will be clinics at McKinnley High School, ECC South, and ECC North. The Pfizer Vaccine will be given to those 16 and 17. While, 18 year olds will receive the Moderna Vaccine. Parental consent is required for 16 and 17 year olds. Please register at [erie.gov](http://erie.gov), or from the top of alerts at [buffaloschools.org](http://buffaloschools.org). Stay tuned for upcoming Clinics as we work to help teens receive vaccines. Thank you."
- aa. "Buffalo youth vaccinated. Youth 16 and up and their families, can get vaccinated at a pop-up site this weekend. Two days only. Friday April 30<sup>th</sup>, and Saturday May 1<sup>st</sup> at GBUAHN Office, 1195 Main Street, 9:00 am until 3:00 pm each day. Register at [urbanfamilypractice.com](http://urbanfamilypractice.com). Walk-ins are welcome. Thank you."



24. That the telephone calls and voicemails made by the Defendant at times rendered Plaintiff's telephone unusable due to the excessive number of messages and calls.
25. That the telephone calls and voicemails from the Defendant are annoying and upsetting to the Plaintiff.
26. That upon information and belief, that the Defendant initiated multiple telephone calls and voicemails to Plaintiff's cellular telephone using an automated telephone dialing system and/or transmitted prerecorded voice messages and/or transmitted artificial messages.

V. COUNT ONE  
(Telephone Consumer Protection Act of 1991  
and 47 C.F.R. 64.1200, et seq.)

27. Plaintiff repeats, realleges and incorporates by reference the preceding and succeeding paragraphs in this complaint as if each of them was reprinted herein below.
28. The Defendant at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and/or fraudulently violated the TCPA, 47 U.S.C. §227, et seq. and 47 C.F.R. 64.1200, et seq. and TCPA, 47 U.S.C. §227(b)(1)(A)(iii) by initiating telephone calls to Plaintiff's telephone using an automatic telephone dialing system and/or used an artificial and/or prerecorded voice to deliver messages without having consent of Plaintiff to make such calls and leave such messages.
29. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this complaint, were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
30. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, caused the Plaintiff to sustain damages as a result of their innumerable teletelephone calls that harassed, annoyed and abused Plaintiff, and disturbed his peace and tranquility at home and elsewhere.
31. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, caused the Plaintiff to sustain damages and experience emotional distress.



32. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, is liable to actual damages, statutory damages, treble damages, and costs.
33. Plaintiff received multiple calls from Defendant using an automatic telephone dialing system and/or an artificial and/or prerecorded voice entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. §227(b)(3)(B),
34. The Defendant caused said teletelephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling Plaintiff to a maximum of treble damages pursuant to the TCPA, 47 U.S.C. §227(b)(3).

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Defendants for:

- (a) Actual damages;
- (b) Statutory damages pursuant to 47 U.S.C. §227(b)(3)(B).
- (c) Treble damages pursuant to 47 U.S.C. §227(b)(3);
- (d) For such other and further relief as may be just and proper.

Dated: June 2, 2021

/s/ Seth J. Andrews  
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